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(37)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. 525/93 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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APPELLANT — Tamo Bhima, S/o Budhu Muriya, aged 35 years, R/o village Acheli, P.S. Kirandul, District Bastar (MP) (now CG).

-Versus-

RESPONDENT — State of Madhya Pradesh (now Chhattisgarh), through In-charge Police Station Kirandul, District Bastar (MP) (now CG).

(Criminal Appeal under Section 374(2) of the Cr.P.C.)

**Division Bench :**

**Hon'ble Shri L.C. Bhadoo &**
**Hon'ble Shri Sunil Kumar Sinha, JJ**

**24-10-2007**

Heard Ku. Nirupama Bajpai, counsel for the appellant & Shri Akhil Mishra, Panel Lawyer for the State.

Oral judgment dictated on *dais*.

**L.C. Bhadoo, J**

The accused/appellant namely, Tamo Bhima, has preferred this appeal through Superintendent, Central Jail, Jagdalpur, being aggrieved by the judgment of conviction and order of sentence dated 28-8-1992 passed by the 2nd Additional Sessions Judge, Bastar, Jagdalpur, in sessions trial No.337/87 whereby and whereunder the accused/appellant along with six other accused persons has been convicted for commission of offence under Sections 148 & 302 read with Section 149 of the Indian Penal Code and sentenced to undergo R.I. for two years and to undergo imprisonment for life, respectively.

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**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश —2— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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2) Case of the prosecution, in brief, is that the deceased namely, Midiyami Bhima (since deceased) purchased agricultural field from Tati Hadma in a consideration of Rs.200/- two years back from the date of incident. At the time of sale, the deceased agreed to pay Rs.3/- towards rent every year to Tati Hadma. However, the rent of the year 1987 was not paid by the deceased to accused Tati Hadma. Therefore, on 7-5-1987 at about 8.00 a.m. Tati Hadma went to the deceased for demanding rent money. The deceased said that he will give the money next day. Tati Hadma left the place. On 8-5-1987 at about 5.00 p.m. accused Tati Hadma along with Tamo Bhima, Tati Joga, Tamo Chamru, Pandu, Tami Bhima & Tati Nanda came to the house of the deceased. At that time the brother of the deceased namely, Midiyami Dorra was at the residence. Present accused Tamo Bhima & Tati Joga were carrying axe in their hands whereas the other accused persons were carrying lathis. Tamo Bhima (present accused/appellant) demanded Rs.3/- of rent from the deceased, on which he asked them to come next day, on which Tati Hadma became angry & started quarrelling with the deceased. In the meantime, the present accused Tamo Bhima attacked the deceased with the axe on his head only once and the remaining accused persons started attacking with hands, fists & clubs, as a result of which Midiyami Bhima fell down on the ground. The incident was witnessed by PW-2 Midiyami Dorra, PW-5 Peese (wife of PW-2 Midiyami Dorra), Hidme (wife of the deceased), Tati Deva, Nupo Hidma, Tati Hurra & Tati Masa. When they came to intervene, the accused persons attacked them also with clubs, hands & fists. The present accused/appellant Tamo Bhima threw the axe on the ground. Deceased became unconscious and died on 9-5-1987 at about 8.00 a.m. Therefore, a Panchayat was

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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convened on 10-5-1987. Thereafter the matter was reported by PW-2 Midiyami Dorra in Police Station Kirandul on which the Police registered the crime No.57/87. The Investigating Officer namely, Vidyanand Kumar left for the scene of occurrence. He prepared inquest under Ex.P/7 on the body of deceased after giving notice Ex.P/6 to the Panchas. Blood stained & plain soil was seized from the place of occurrence under Ex.P/8. The axe, which was thrown by the accused/appellant on the place of occurrence, was seized under Ex.P/9. Clubs were seized under Exs.P/10, P/11 & P/12. One Dhoti was seized from the place of occurrence under Ex.P/13. The body of deceased was sent for postmortem examination to Mini Primary Health Centre, Kirandul under Ex.P/15 where Dr. A.K. Singh (PW-8) conducted postmortem and prepared report Ex.P/21. He opined that the cause of death was on account of bleeding, shock & coma, as a result of head injury.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dantewada, who in turn committed the case to the Court of Sessions Judge, Jagdalpur, from where learned 2nd Additional Sessions Judge, Bastar, received the same on transfer for trial.

4) In order to establish the charge against the accused persons, the prosecution examined 8 witnesses. Statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the material appearing against them in the prosecution evidence and pleaded innocence.

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश —५— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced all the seven accused persons as aforementioned.

6) We have heard Ku. Nirupama Bajpai, learned counsel for the appellant and Shri Akhil Mishra, Panel Lawyer for the State.

7) Ku. Bajpai, learned counsel for the accused/appellant, has not disputed the homicidal death of Midiyami Bhima. Moreover, Dr. A.K. Singh (PW-8) has stated that he had conducted postmortem on the body of deceased on 12-5-1987. He found that there was a fracture in the palm, one incised wound & two lacerated wounds on the head. The incised wound was in the size of 1" x ¼" x ¼", which was on the right side of the forehead. Another incised wound on the occipital region in the size of 2" x ¼"x ½". There was a lacerated wound on the mastoid process on the left side of parietal region. There was a compound fracture on the parietal bone. The brain membrane was shrinked and brain material was coming out. Death was homicidal in nature. Therefore, in view of the above evidence of Doctor the death of Midiyami Bhima was homicidal in nature.

8) As far as involvement of the accused/appellant in the crime in question is concerned, the conviction rests on the testimony of two eyewitnesses namely, PW-2 Midiyami Dorra (brother of the deceased) & PW-5 Peese (wife of PW-2 Midiyami Dorra). In examination-in-chief, both the witnesses have stated that Tamo Bhima attacked Midiyami Bhima with an axe, but in cross-examination, they have not been able to stand-by the said version.

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश —5— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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9) PW-2 Midiyami Dorra (brother of the deceased) in para 5 of his cross-examination has stated that he came after the quarrel and he was informed by the wife of deceased that there was a quarrel between Tati Hadma & Midiyami Bhima (deceased). When he reached Midiyami Bhima was about to die. Hurra, Masasa & Nupo reached there after him. In para 6, he has stated that when he reached except Midiyami Bhima and his wife no other person was present in the house. In para 8, he has stated that when the quarrel started between Tati Hadma & Midiyami Bhima he left the place being frightened. Therefore, in view of the cross-examination, the evidence of this witness is not consistent with the evidence that, in fact, he witnessed the incident. From cross-examination, the only conclusion can be drawn that this witness reached the place of occurrence after the incident was over.

9) PW-5 Peese (wife of PW-2 Midiyami Dorra) also in para 3 of her cross-examination has stated that on the fateful day she was working at the agricultural field. When she returned from the agricultural field, the villagers informed her that the villagers have committed the murder of Madiyami Bhima. The accused persons are of her village. The above evidence of this witness establishes the fact that, in fact, she was not present at the scene of occurrence. She was informed by the villagers regarding the assault made by the villagers on Midiyami Bhima.

10) PW-3 Nupo Hidma in examination-in-chief has stated that when the accused persons were catching Midiyami Bhima he left the place and in cross-examination, he has stated that he came to know through Midiyami Dorra that Tati Hadma & Midiyami Bhima had quarreled. He had not seen the incident. There is no other evidence regarding the involvement of the accused/ appellant

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in the crime in question. Even the axe in question was seized from the place of occurrence, same was not seized at the instance of the accused. Therefore, there is no ocular or circumstantial evidence to connect the accused/appellant with the crime in question.

11) For the foregoing reasons, conviction of the accused/appellant under Sections 148 and 302 read with Section 149 of the IPC cannot be sustained.

12) In the result, the appeal succeeds and same is allowed. Conviction & sentences imposed upon accused/appellant Tamo Bhima under Sections 148 and 302 read with Section 149 of the Indian Penal Code are set aside. He is acquitted of the said charges. It is stated that the accused/appellant remained in detention for about 7 years, therefore, he be set at liberty forthwith, if not required in any other case. So far as other accused persons are concerned, even though they have filed separate appeal, but on completion of sentence, they have already been released from jail.

Sd/-
L.C. BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge